

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

TYLER DIVISION

DATE: April 27, 2010

JUDGE
LEONARD DAVIS

COURT REPORTER
Judy Werlinger

Law Clerks: Natalie Alfaro

SOVERAIN SOFTWARE, LLC vs. NEWEGG, INC. LTD	CIVIL ACTION NO: 6:07-CV-511 Jury Trial - Day 2
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ATTORNEYS FOR PLAINTIFF	ATTORNEYS FOR DEFENDANTS
Kenneth Adamo (Jones Day) Tom Giannetti (Jones Day) Barry Satine (Jones Day) Clark Craddock (Jones Day) Carl Roth (Roth Firm) Michael Smith (Siebman Reynolds) Katherine Wolanyk - Client Representative	Dick Sayles (Sayles Werbner) Mark Strachan (Sayles Werbner) Kent Baldauf (The Webb Lawfirm) Dave Hanson (The Webb Lawfirm) Claudia Frost (Pillsbury Winthrop Shaw Pittman) Lee Cheng (Newegg) Mira Wolff (Newegg)

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 8:45 am

ADJOURN: 5:05 pm

8:45 am	Hearing outside presence of jury.
	Court addressed the parties and inquired what issues needed to be addressed.
	Mr. Satine addressed the Court and indicated that Newegg has a number of objections to Sovereign's demonstratives that will be used in Nawrocki's direct examination. (Slides tendered to the Court.
	Mr. Sayles addressed the Court and Newegg objects to slides because there are objections to the underlying exhibits (Plaintiff's Exhibits #162-176 and 245). (Written objections tendered to the Court)

DAVID J. MALAND, CLERK

FILED: 4.27.2010

BY: Rosa L. Ferguson , Courtroom Deputy

	<p>Mr. Sayles outlined the slides objected to:</p> <ul style="list-style-type: none"> • Slide 5- Pltfs exhibit 174, which is objected to. Damage period is stipulated to date of filing suit (2007) to date of trial. The numbers go back to 2001 - any numbers prior to damages period of 2007 would be prejudicial. • Slide 6 - the extent of use is bar graphed and goes to 2005 - it's color-coded for damages period. • Slide 12 - Newegg's commercial success is not a Georgia Pacific factor - the success of the patented technology is a factor. • Slide 13 - Founded on Ex. 245 - mentions net sales of \$2.1 Billion - irrelevant and unfairly prejudicial. • Slide 15 - Founded on Ex 174 - bar graph showing Newegg's extend of use that goes back to 2004. • Slides 16-19 - Founded on documents that are objected to. States net sales and gross profits and calculation is irrelevant and prejudicial.
	Court addressed Mr. Sayles regarding the expert's report and whether addressed with a <i>Daubert</i> Motion. Mr. Sayles responded.
	Mr. Satine responded and stated that there was a <i>Daubert</i> motion directed to this. Court inquired as to the royalty rate. Mr. Satine responded as to Nawrocki's calculating profitability to assist him in his royalty rate. Court overruled objections.
	Mr. Sayles addressed the Court on remaining objections on the deposition testimony. Written objections tendered to the Court.
	Mr. Adamo addressed the Court.
	Court asked for the jury to be brought in.
	Jury seated in the courtroom. Court welcomed the jury back.
	DR. JACK GRIMES on the witness stand. Cross examination of Dr. Grimes by Mr. Baldauf.
	Mr. Baldauf passed the witness. Redirect examination of Dr. Grimes by Mr. Adamo.
	Mr. Adamo passed the witness. No further questions of this witness.
10:12 am	Court in recess until 10:30 a.m.
10:30 am	Trial resumed. Jury seated in the courtroom.
	Mr. Adamo called G. WINFIELD TREESE to the witness stand. Witness previously sworn.
	Direct examination of Mr. Treese by Mr. Adamo.
	Mr. Adamo passed the witness. Cross examination of Mr. Treese by Mr. Hanson.
12:00 pm	Court in recess until 1:00 pm
1:05 pm	G. WINFIELD TREESE on the stand. Cross examination of Mr. Treese by Mr. Hanson continued.
	Mr. Hanson passed the witness. No further questions of the witness.
	Mr. Roth called KATHARINE WOLANYK to the witness stand. Witness previously sworn.
	Direct examination of Ms. Wolanyk by Mr. Roth.

	Mr. Roth passed the witness. Cross examination of Ms. Wolanyk by Mr. Sayles. Mr. Sayles asked to approach the bench. (Bench conference held).
2:25 pm	Court in recess until 2:40 pm.
2:40 pm	Jury not present in the courtroom.
	Court inquired of Mr. Sayles if he wished to pursue the questioning that was discussed prior to the break. Mr. Sayles responded and does not. Court asked for jury to be brought in. Jury seated in the courtroom.
	KATHARINE WOLANYK on the witness stand. Cross examination of Ms. Wolanyk by Mr. Sayles continued.
	Mr. Sayles passed the witness. Redirect examination of Ms. Wolanyk by Mr. Roth.
	Mr. Roth passed the witness. Recross examination of Ms. Wolanyk by Mr. Sayles.
	Mr. Sayles passed the witness.
	Mr. Satine called JAMES NAWROCKI to the witness stand. Witness previously sworn.
	Direct examination of Mr. Nawrocki by Mr. Satine.
	Mr. Satine passed the witness. Cross examination of Mr. Nawrocki by Mr. Sayles.
	Mr. Sayles passed the witness. Redirect examination of Mr. Nawrocki by Mr. Satine.
	Mr. Satine passed the witness. Recross examination of Mr. Nawrocki by Mr. Sayles.
	Mr. Sayles passed the witness. No further questions of this witness.
4:50 pm	Court addressed the Jury. Court inquired if the plaintiff rested. Mr. Adamo responded and Mr. Adamo rests conditional on the Court resolving some issues on exhibits.
4:55 pm	Court addressed the Jury and the Plaintiff's case has concluded and will begin with the Defendant's case in the morning. Court excused the jury for the evening.
	Mr. Sayles addressed the Court on a motion to be made.
	Mr. Adamo addressed the court on exhibits he wished to admit. Mr. Adamo tendered to the court a Bench Memo. Mr. Adamo moved to admit Plaintiff's Exhibits 54 and 244. Mr. Sayles responded. Court admitted Plaintiff's Exhibits #54 and 244.
	Mr. Sayles made Motion to Strike Nawrocki's Testimony on the number of orders he testified to due to Mr. Nawrocki did not subtract 1-item orders. Mr. Sayles cited from the <i>Lucent</i> case. Mr. Adamo responded as to Dr. Grimes' testimony. Mr. Sayles responded. Court denied motion.
	Court will hear JMOLS this afternoon. Mr. Sayles addressed the Court on the Rule 50 motion and indicated that Ms. Frost would make them. Ms. Frost addressed the Court regarding Rule 50 motions and they are not prepared to make them.
	Mr. Adamo inquired as to time used by the parties thus far. Court informed that Plaintiff has used 6 hours and 47 minutes and Defendant has used 3 hours and 13 minutes.
5:05 pm	There being nothing further, Court adjourned for the day.